IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.373 OF 1994

Sunil Rajabhau Chavan — Appellant (Org.Accused)

Vs.

The State of Maharashtra — Respondent

Mr.Abhaykumar Apte h/f. Mr.T.E.Mane for appellant.
Dr.F.R.Shaikh, APP for State.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

February 23, 2005.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed by the appellant who was convicted for offence under Section 302 of IPC and sentenced to life imprisonment and to pay a fine of Rs.1000/- in default to suffer RI for six months for the murder of his first cousin Sanjay, son of Manik Chavan by the Sessions Judge, Solapur on 19/5/1994 in Sessions Case No.99 of 1993.

2. The facts leading to the present appeal briefly stated are as follows:

. The incident of assault had taken place on 23rd March 1992 in the house of the deceased Sanjay at about 2.30 p.m. when appellant is alleged to have stabbed Sanjay with knife (article no.9) and caused his death. The appellant-Sunil and deceased Sanjay were first cousins. There was dispute in respect of the landed property between the two brothers i.e. the fathers of appellant Sunil and deceased Sanjay. Three years before the present incident the quarrel had taken place between Manik, father of the deceased and Rajabhau, father of the appellant-accused. At that time Rajabhau was murdered. Deceased Sanjay and his father Manik were prosecuted for the murder of Rajabhau. Both were convicted but they were released on bail. Hearing the moaning sound of injured Sanjay his paternal grandmother Janabai PW 1 was informed by one Sarubai. She rushed to the house of Sanjay to find him in a pool of blood. On being asked Sanjay told her that appellant had stabbed him. Sanjay was rushed to the Civil Hospital where he was attended by Dr.Patil. From the hospital information was sent to the police station and the police rushed to the hospital to be told that Sanjay had died. Complaint of Janabai was recorded which is at Exhibit 25 on the basis of which crime was registered. The dead body

was sent for post-mortem examination. The statements of number of witnesses were recorded by the police. The accused was arrested on 24/9/1992. At the time of arrest he was wearing the clothes which were found blood stained. They were attached under arrest panchanama (Exh.28). On 27/9/1992 the appellant volunteered to produce the knife which was thrown by him near the tree in the vicinity of the house of the deceased. The said knife which was found blood stained was seized under panchanamas (Exh. 30 & 31). The clothes of the deceased and the appellant and knife (article no.9) were sent to the CA for examination. As per the CA reports the blood of the accused as well as deceased were sent in phials. The clothes of the accused as well as of the deceased and knife (article no.9) were found stained with blood of Group "A". The blood of the accused was also of "A" group. After completion of the investigation charge-sheet was filed and the case was committed to the Sessions Court.

3. Before the Sessions Court charge was framed for offence of murder under Section 302 of IPC against the appellant-accused to which he pleaded not guilty.

On behalf of the prosecution ten witnesses were examined who are as follows:

. PW 1 is Nagesh Chavan, Revenue Circle Inspector, Solapur who drew the sketch of the scene of offence. PW 2 is Janabai Chavan, the complainant who was paternal grandmother of both appellant as well as the deceased. PW 3 is Sarubai Warkad who had seen the appellant running away from the house of the deceased at the time of incident and had informed about the same to Janabai but she had turned hostile. PW 4 is Shivkumar Swami who was panch for the arrest of the accused and seizure of the blood stained clothes of the accused. PW 5 is Sidhharam Waghmare who acted as panch for the discovery of knife (article no.9) at the instance of the accused. PW 6 is Amol Shinde, nine years old boy who was related to both appellant as well as the deceased but had turned hostile. He was examined as a witness who had heard appellant telling his wife that he had stabbed Sanjay. PW 7 is PSI Shirajuddin Shaikh who had arrested the accused. PW 8 is Dr.Deshpande who performed autopsy on the dead body. PW 9 is Sharadkumar Patil who had attended the injured in civil hospital and had issued certificate

of injuries and recorded the history of assault by the appellant as given by injured Sanjay in the hospital. Lastly PW 10 is PSI Raje who investigated the case. The defence of the appellant was of total denial. He had not examined any defence witness though in his examination under Section 313 of Cr.P.C. he had stated that he wanted to examine one witness by name Bhaskar Ganpat Shinde.

4. After considering the entire evidence on record the learned Sessions Judge by his impugned judgment and order dated 19/5/1994 had convicted the appellant for the offence of murder under Section 302 of IPC and sentenced him to life imprisonment and to pay a fine of Rs.1000/- in default R.I. for six months. The said judgment and order of conviction is under challenge in this appeal filed by the convicted accused.

5. With the assistance of defence Advocate we have perused the evidence led by the prosecution and heard the defence Advocate. He raised the same points on behalf of the appellant which were argued in the

trial Court.

6. The main evidence against the appellant is firstly that of complainant Janabai - PW 2 who had rushed to see Sanjay immediately after the incident when she was told about the same by PW 3 Sarubai who had turned hostile. Sanjay had made oral dying declaration to Janabai. The second piece of evidence against the appellant is history given by Sanjay to the doctor in the Civil Hospital which was recorded by Dr.Patil PW 9. The third circumstance against the appellant is the recovery of blood stained clothes from his person at the time of arrest. As per the CA report blood of group "A" was found on his shirt as well as pant which was also the blood group found on the clothes of the deceased. Then there was recovery of knife (article no.9) at the instance of the appellant-accused which was also found stained with blood of group "A". Lastly there is medical evidence as per which Sanjay had received incised stab wounds which were possible with the use of knife (article no.9) seized at the instance of the accused.

7. Complainant Janabai who is the paternal grandmother of both the appellant as well as the deceased Sanjay was in her house in the afternoon of the incident. She was staying hardly 500 ft. away from the house of the deceased and the accused. That afternoon Sarubai PW 3 told her that when she had gone for fetching drinking water she had heard the moaning sound from the house of the deceased. She, therefore, went into that house to see who was moaning. When she went to Sanjay's house she saw that Sanjay was bleeding and was moaning. She further states that Sarubai told her that at that time she had seen accused Sunil running away from that place. She then went to the house of Sanjay whom she found in a pool of blood. When she asked Sanjay as to what happened he told her that Sunil had stabbed him. He further told that Sunil was alone and that no one else was with him. She raised hue and cry and, therefore, people gathered there and a rickshaw was brought in which Sanjay was taken to the Civil Hospital. She has further deposed that the property of the family was divided among her sons. She had six sons and two daughters out of whom five were dead. Her son Manik i.e. father of the deceased Sanjay was given ten acres of land. Similarly her other son Rajabhau, the

father of appellant was also given ten acres of land. The ten acres of land was given to her son's son Prabhakar and remaining six acres of land stood in her name. Manik, father of Sanjay and Rajabhau, father of the appellant were residing in Mehetre vasti. Three years ago there was quarrel between Manik and Rajabhau over the land when Rajabhau was murdered. Manik and deceased Sanjay were prosecuted for murder of Rajabhau and were also convicted in that case. However, they were released on bail. Thus this witness has deposed about the motive for the murder of Sanjay by the appellant as appellant's father was previously murdered by Sanjay and his father Manik. She had rushed to the house of Sanjay when he was lying in a pool of blood but still alive and in a position to speak. On being questioned he had told her that Sunil had stabbed him. Her evidence is not at all shaken in the cross-examination. Her evidence is fully corroborated by complaint (Exh.25) which was lodged immediately after Sanjay was taken to the hospital by her.

8. Her evidence is also supported by the deposition of PW 9 Dr.Patil who had attended Sanjay on

his admission to the Civil Hospital and the medical case papers (Exh.40) which was produced by PW 9. Dr.Patil has deposed that Sanjay gave the history that he was assaulted at home at about 2.30 p.m. by Sunil which was recorded by him in the medical case papers. He has denied that the history as recorded in the medical papers that Sanjay was stabbed by Sunil was given by any relative of the patient but the same was given by Sanjay himself. Even the medical papers corroborate and support his deposition in which it is mentioned as follows:

> "H/o. alleged assault at chest 2-30 p.m. in the home by Sunil."

He had noticed following six injuries on the person of Sanjay:

> (1) Incised wound 2 c.m. x 1/2 c.m. muscle deep - Rt. scapular region.
>
> (2) Incised wound 2 c.m. x 1/2 c.m. muscle deep - right side of the back.
>
> (3) Incised wound 3 c.m. x 1 & 1/2 c.m. muscle deep Left renal area.
>
> (4) Incised wound 3 c.m. x 1/2 c.m. muscle deep left lumbar region.
>
> (5) Cut incised wound 1 c.m. x 1/4 c.m. right ear lobe.

(6) Incised wound 3 c.m. x 1/2 c.m. right iliacforssa.

According to Dr.Patil the above injuries were caused by sharp object within 24 hours prior to the time of examination and all the injuries except injury no.5 were grievous injuries. He has further deposed that injuries mentioned in the certificate were possible by the blade of knife (article no.9) shown to him. According to him injury nos.1 to 4 and 6 were sufficient to cause death in the ordinary course of nature. In his cross-examination he has stated that talk of Sanjay was clear and audible but it was a halting talk. Sanjay had also spoken about the consumption of alcohol but it was not clear to the doctor what he wanted to say about the same except that it appeared to him that the patient had consumed alcohol. In his answer to the question put to him by Court Dr.Patil has stated that injury no.6 showed that internal organ was injured. The injury no.6 is about 1 c.m. deep and, therefore, internal organ was injured.

9. The prosecution had also examined Dr.Deshpande who had performed autopsy on the dead

body. He had noticed 11 injuries including abrasions and sutured stab wound in the abdomen, scapular region as well as over spine. According to him also cause of death was shock and haemorrhage due to multiple stab injuries caused to vital organs like lungs and spleen which were sufficient in the ordinary course of nature to cause death.

10. PW 4 Shivkumar Swami who had acted as panch at the time of arrest of the accused has deposed that accused was arrested on 24/9/1992 at about 4.30 p.m. At that time he was wearing one green colour shirt and brown colour pant which are article nos. 7 and 8 which were attached under the panchanama (Exh.28). According to him there were blood stains on the front portion of the shirt and on front right hand side of the pant near bottom. That is also supported by PW 7 PSI Shaikh who had arrested the accused and thereafter handed over the accused along with attached clothes to P.I. Bhakte of Vijapur Naka Police Station along with his report (Exh.34).

11. PW 5 Sidhharam Waghmare was panch for the

discovery of knife (article no.9) at the instance of the accused. This witness has deposed that he was called at the police station along with another panch on 27/9/1992 when accused volunteered to produce the knife which he had kept near the brick kiln near Kumtha naka. It was kept near Kadu-Babul tree. Accordingly he led the police and panchas to the said place. The accused took out the knife from under the litter under Babul tree. The said knife was having three inches long blade. Blood stains were noticed on the knife which was attached under panchanama (Exh.30 and 31). His evidence is corroborated by memorandum of panchanama Exh.30 and seizure of knife under panchanama Exh.31. His evidence is supported by the evidence of PSI Raje who was the Investigating Officer.

12. The clothes of the accused, the deceased and the knife recovered at the instance of the accused were sent to CA for examination. The blood of accused was also sent for examination. As per CA report dated 31st December 1992 (Exh.35) the blood of appellant was of "A" group. His clothes were also found stained with blood of "A" group as per the same report.

Similarly the clothes of the deceased and knife (article no.9) were shown to have blood of "A" group as per the CA report dated 30th January 1993 (Exh.36). Thus the CA report also squarely corroborates and supports the prosecution case. Finding of blood of group "A" which was found on the clothes of the accused which was also noticed on the clothes of the deceased is a very strong circumstance which connects the appellant with the murder of Sanjay. No doubt as per the CA report blood of appellant was also of "A" group but there was no injury on the person of the appellant and no explanation was given by the appellant for finding of the said blood on his clothes. The finding of blood of group "A" on the knife (article no.9) which was recovered at the instance of the appellant is an additional circumstance which connects the appellant with the murder of Sanjay, son of Manik.

13. Thus there is absolutely reliable evidence of PW 2 Janabai who was the paternal grandmother of both the deceased Sanjay as well as the appellant who has deposed about the motive and oral dying declaration made to her by Sanjay immediately after

the incident when she went to see him after she was informed about Sanjay lying injured by PW 3 Sarubai. Her evidence is corroborated by the immediate FIR (Exh.25) lodged by her and the medical evidence about the injuries which were possible with the use of knife (article no.9) which was recovered at the instance of the appellant. Her evidence is also supported by the medical case papers which records the history of assault by appellant Sunil. According to the deposition of Dr.Patil that history was recorded by him in the case papers as given by patient Sanjay himself. Said evidence is further corroborated by the circumstances of finding of blood of group "A" on the clothes of the appellant-accused at the time of his arrest and the finding of blood of group "A" on knife (article no.9) which was recovered at the instance of the appellant. The aforesaid evidence leaves no doubt that it was the appellant who had murdered the deceased Sanjay. He had inflicted injuries on Sanjay which were sufficient to cause death in the ordinary course of nature as per the evidence of both Dr.Deshpande PW 8 as well as Dr.Patil PW 9. Those injuries could be possibly caused by use of knife (article no.9) recovered at the instance of the appellant.

14. In the aforesaid circumstances the order of conviction and sentence recorded by the trial Court against the appellant deserves to be confirmed and the appeal is liable to be dismissed.

15. In the result, the order of conviction and sentence recorded by the Sessions Judge, Solapur in Sessions Case No.99 of 1993 against the appellant is confirmed and his appeal is dismissed. The appellant shall surrender to his bail bonds forthwith.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)